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United States of America

IN THE UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

UNITED STATES OF AMERICA,

Plaintiff,

v.

LEOBARDO GERARDO ANAYA,

Defendant.

CASE NO. 2:21-CR-00055-TLN

STIPULATION REGARDING EXCLUDABLE
TIME PERIODS UNDER SPEEDY TRIAL ACT;
FINDINGS AND ORDER

DATE: July 15, 2021
TIME: 9:30 a.m.
COURT: Hon. Troy L. Nunley

This case is set for a status conference on July 15, 2021. On May 13, 2020, this Court issued General Order 618, which suspends all jury trials in the Eastern District of California “until further notice,” and allows district judges to exercise their discretion to continue all criminal matters on a case-by-case basis. This and previous General Orders were entered to address public health concerns related to COVID-19.

Although the General Orders address the district-wide health concern, the Supreme Court has emphasized that the Speedy Trial Act’s ends-of-justice provision “counteract[s] substantive openendedness with procedural strictness,” “demand[ing] on-the-record findings” in a particular case. *Zedner v. United States*, 547 U.S. 489, 509 (2006). “[W]ithout on-the-record findings, there can be no exclusion under” § 3161(h)(7)(A). *Id.* at 507. Moreover, any such failure cannot be harmless. *Id.* at 509; *see also United States v. Ramirez-Cortez*, 213 F.3d 1149, 1153 (9th Cir. 2000) (explaining that a judge ordering an ends-of-justice continuance must set forth explicit findings on the record “either orally

1 or in writing”).

2 Based on the plain text of the Speedy Trial Act—which *Zedner* emphasizes as both mandatory
3 and inexcusable—General Orders 611, 612, 617, and 618 require specific supplementation. Ends-of-
4 justice continuances are excludable only if “the judge granted such continuance on the basis of his
5 findings that the ends of justice served by taking such action outweigh the best interest of the public and
6 the defendant in a speedy trial.” 18 U.S.C. § 3161(h)(7)(A). Moreover, no such period is excludable
7 unless “the court sets forth, in the record of the case, either orally or in writing, its reason or finding that
8 the ends of justice served by the granting of such continuance outweigh the best interests of the public
9 and the defendant in a speedy trial.” *Id.*

10 The General Orders exclude delay in the “ends of justice.” 18 U.S.C. § 3161(h)(7) (Local Code
11 T4). Although the Speedy Trial Act does not directly address continuances stemming from pandemics,
12 natural disasters, or other emergencies, this Court has discretion to order a continuance in such
13 circumstances. For example, the Ninth Circuit affirmed a two-week ends-of-justice continuance
14 following Mt. St. Helens’ eruption. *Furlow v. United States*, 644 F.2d 764 (9th Cir. 1981). The court
15 recognized that the eruption made it impossible for the trial to proceed. *Id.* at 767–68; *see also United*
16 *States v. Correa*, 182 F. Supp. 326, 329 (S.D.N.Y. 2001) (citing *Furlow* to exclude time following the
17 September 11, 2001 terrorist attacks and the resultant public emergency). The coronavirus is posing a
18 similar, albeit more enduring, barrier to the prompt proceedings mandated by the statutory rules.
19 In light of the societal context created by the foregoing, this Court should consider the following case-
20 specific facts in finding excludable delay appropriate in this particular case under the ends-of-justice
21 exception, § 3161(h)(7) (Local Code T4).¹ If continued, this Court should designate a new date for the
22 status conference. *United States v. Lewis*, 611 F.3d 1172, 1176 (9th Cir. 2010) (noting any pretrial
23 continuance must be “specifically limited in time”).

24 STIPULATION

25 Plaintiff United States of America, by and through its counsel of record, and defendant, by and
26 through defendant’s counsel of record, hereby stipulate as follows:

27 ¹ The parties note that General Order 612 acknowledges that a district judge may make
28 “additional findings to support the exclusion” at the judge’s discretion. General Order 612, ¶ 5 (E.D.
Cal. March 18, 2020).

1 1. By previous order, this matter was set for a status conference on July 15, 2021.

2 2. By this stipulation, defendant now moves to continue the status conference until
3 September 30, 2021, at 9:30 a.m., and to exclude time between July 15, 2021, and September 30, 2021,
4 under Local Code T4.

5 3. The parties agree and stipulate, and request that the Court find the following:

6 a) The government has represented that the discovery associated with this case
7 includes investigative reports and related documents, criminal history documents, audio files,
8 video files, and other multimedia files totaling hundreds of pages of documents and large
9 amounts of data. All of this discovery has been either produced directly to counsel and/or made
10 available for inspection and copying.

11 b) In light of this discovery, counsel for defendant desires additional time to consult
12 with her client, to review the current charges, to conduct investigation and research related to
13 those charges, to review and copy discovery for this matter, to inspect physical evidence seized
14 and/or otherwise available concerning this matter, to discuss potential resolutions with her client,
15 to consider and/or prepare pretrial motions, and to otherwise prepare for trial.

16 c) Moreover, in addition to the general public-health concerns cited by General
17 Order Nos. 611, 612, 617, and 618, and presented by the evolving COVID-19 pandemic, which
18 the parties incorporate herein, an ends-of-justice delay is particularly apt in this case because
19 defense counsel has a trial scheduled for mid-September, and counsel will need time to prepare
20 for and conduct that trial, in addition to the time needed to review discovery and otherwise
21 investigate the facts of the above-captioned case.

22 d) Counsel for defendant believes that failure to grant the above-requested
23 continuance would deny her the reasonable time necessary for effective preparation, taking into
24 account the exercise of due diligence.

25 e) The government does not object to the continuance.

26 f) Based on the above-stated findings, the ends of justice served by continuing the
27 case as requested outweigh the interest of the public and the defendant in a trial within the
28 original date prescribed by the Speedy Trial Act.

1 g) For the purpose of computing time under the Speedy Trial Act, 18 U.S.C. § 3161,
2 et seq., within which trial must commence, the time period of July 15, 2021 to September 30,
3 2021, inclusive, is deemed excludable pursuant to 18 U.S.C. § 3161(h)(7)(A), B(iv) [Local Code
4 T4] because it results from a continuance granted by the Court at defendant's request on the basis
5 of the Court's finding that the ends of justice served by taking such action outweigh the best
6 interest of the public and the defendant in a speedy trial.

7 4. Nothing in this stipulation and order shall preclude a finding that other provisions of the
8 Speedy Trial Act dictate that additional time periods are excludable from the period within which a trial
9 must commence.

10 IT IS SO STIPULATED.

11 Dated: July 8, 2021

12 PHILLIP A. TALBERT
13 Acting United States Attorney

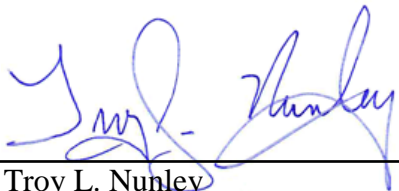
14 /s/ AARON D. PENNEKAMP
15 AARON D. PENNEKAMP
16 Assistant United States Attorney

17 Dated: July 8, 2021

18 /s/ CHRISTINA SINHA
19 CHRISTINA SINHA
20 Counsel for Defendant
21 LEOBARDO GERARDO
22 ANAYA

23 FINDINGS AND ORDER

24 IT IS SO FOUND AND ORDERED this 8th day of July, 2021.

25 
26 Troy L. Nunley
27 United States District Judge
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